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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of:

Grandfathered Short-Spaced
FM Stations

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MM Docket No. 96-120
RM-7651

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

COMMENTS OF LIBERMAN BROADCASTING, INC.

Liberman Broadcasting, Inc. ("Liberman"), by its attorneys, hereby submits its comments in response to the above-referenced Notice of Proposed Rulemaking (the "NPRM").¹ For the reasons set forth more fully below, Liberman agrees that the proposed changes to the method for modifying the facilities of pre-1964 short-spaced FM stations ("grandfathered short-spaced stations") will allow licensees such as Liberman to institute beneficial technical changes to their facilities. Accordingly, Liberman fully supports the Commission's proposals to revise Section 73.213 of its rules, particularly the proposal to change the spacing and protection criteria applied to second and third-adjacent channels.

The NPRM states that the Commission has determined that the existing rule governing modifications of grandfathered short-spaced FM stations has proven to be ineffective and precludes modifications that would serve the public interest. NPRM at ¶ 1. Accordingly, the Commission has proposed to (i) use predicted interference area analysis instead of the current ambiguous limitation based on the relative locations of the 1 mV/m service contour of the short-spaced stations; (ii) eliminate the second-adjacent-channel and third-adjacent-

¹ Notice of Proposed Rulemaking, MM Docket No. 96-120, RM-7651, FCC 96-236 (rel. June 14, 1996).

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channel protection criteria; and (iii) eliminate the provision for agreements between grandfathered stations. *Id.* at * 2. Liberman supports the Commission's efforts and files these comments to provide evidence based upon the licensee's own experience that the current rule serves only to restrict the ability of grandfathered short-spaced FM stations to implement facilities modifications that will increase service to the public without harming other stations.

As the Commission's records will reflect, Liberman is the licensee of KBUE(FM), Long Beach, California, a grandfathered short-spaced FM Station that currently operates on 105.5 mHz with an effective radiated power ("ERP") of 1.05 kilowatts. KBUE is short-spaced to two super-powered Los Angeles FM stations (KKGO-FM and KPWR) that operate on second-adjacent-channels on either side of KBUE. Because the 1 mV/m contours of those stations each encompass the 1 mV/m contour of KBUE, virtually any change in the facilities of KBUE would extend the predicted distance of the station's 1 mV/m contour towards the 1 mV/m contour of the short-spaced stations, in violation of Section 73.213.

In November 1995, Liberman filed an application to increase the ERP of KBUE to 2.85 kilowatts. See FCC File No. BPH-951102ID. This increase in power would not only enable KBUE to improve service and increase significantly the population served by the station, but would help to ameliorate "ducting" interference resulting from weather conditions in Southern California and the operation of an adjacent channel San Diego station. With the application, Liberman submitted an engineering statement demonstrating that KBUE does not now and would not as a result of the proposed modification cause any cognizable interference

to either of the second adjacent channel short-spaced stations. Despite this demonstrated lack of interference, however, Liberman is required to obtain a waiver of the current rule in order to obtain a grant of its application because of the rule's current method for protecting second-adjacent-channel stations.

Notwithstanding Liberman's engineering analysis, the two second-adjacent-channel stations filed informal objections to the proposed modification. Both noted the fact that the application was not consistent with the standards set forth in Section 73.213 because the 1 mV/m contour of KBUE would be extended toward the 1 mV/m contours of the second-adjacent channel stations.² Significantly, however, neither objector seriously disputed the conclusions contained in Liberman's engineering analysis that no cognizable interference to its station would result from the requested modification.

Liberman's application thus is a prime example of the "ineffectiveness" of the current rule -- which would, absent waiver, prevent modifications even though they cause no interference to other grandfathered short-spaced FM stations -- and the need to replace it with a rule that provides grandfathered short-spaced FM stations with greater flexibility to modify their facilities. This is particularly true with regard to the protection of second and third-adjacent-channel stations. The Commission notes in the NPRM that it received no complaints of this nature during the more than twenty years that the rules allowed grandfathered short-spaced FM stations to make modifications with complete flexibility on

² One of the objections also noted that the pendency of this proceeding could affect the outcome of Liberman's proposal. The FCC's database indicates that further processing of the application has been blocked because of the rulemaking.

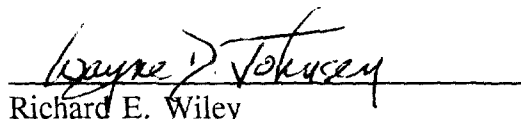
second-adjacent-channel and third-adjacent-channel short spacings. NPRM at ¶ 24. In its application, Liberman demonstrates that, in its particular situation, no interference would be caused to such stations. Yet the current rule could still act to preclude grant of the application.³ Accordingly, Liberman strongly supports the Commission's proposal to eliminate this unnecessary impediment to improvement of service by grandfathered short-spaced stations.

For the foregoing reasons, Liberman agrees that the proposed changes to Section 73.213 would serve the public interest by providing grandfathered short-spaced stations needed flexibility to modify their facilities and urges the Commission to adopt the proposal on an expedited basis.

Respectfully submitted,

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³ Even if the Commission decides not to change the rule as proposed, Liberman submits that there is no reason not to grant waivers of the rule where it can be demonstrated that no interference would result from the proposed modification.